

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JEFFERY W. HIRSCH,

Appellant,

vs.

ISIDRO BACA, WARDEN; JAMES
DZURENDA, SECRETARY, NDOC;
DWAYNE DEAL, OMD, NDOC; AND
THE HONORABLE BRIAN
SANDOVAL, R-NV GOVERNOR, THE
STATE OF NEVADA,
Respondents.

No. 76985-COA

FILED

JUL 18 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Younky
DEPUTY CLERK

ORDER OF AFFIRMANCE

Jeffery W. Hirsch appeals from an order of the district court denying a “petition for a writ of habeas corpus pursuant to NRS 34.360.”¹ First Judicial District Court, Carson City; James Todd Russell, Judge.

First, Hirsch argues the district court improperly treated his his July 16, 2018, petition as if it were a postconviction petition for a writ of habeas corpus when he actually filed the petition pursuant to NRS 34.360. Our review of the record reveals Hirsch is correct, he filed his petition pursuant to NRS 34.360, and the district court should not have considered it as a postconviction petition for a writ of habeas corpus. However, Hirsch was not entitled to relief and, therefore, we affirm the decision of the district court. *See Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970).

In his petition, Hirsch claimed he was entitled to application of statutory credits toward his minimum parole eligibility and the failure to

¹This appeal has been submitted for decision without oral argument. NRAP 34(f)(3).

apply credits toward his parole eligibility violated the Ex Post Facto and Equal Protection Clauses. However, Hirsch's claims were not within the scope of a petition for a writ of habeas corpus filed pursuant to NRS 34.360 because his claims did not "inquire into the cause of [his] imprisonment or restraint." The cause of Hirsch's imprisonment, as revealed by the record before this court, was the judgment of conviction filed on March 9, 2018, for Hirsch's conviction of reckless driving.² Because Hirsch's claims concerning the application of statutory credits were not within the scope of a petition for a writ of habeas corpus filed pursuant to NRS 34.360, the district court properly denied relief.

Second, Hirsch argues the district court abused its discretion by referring him for the forfeiture of credits because he filed his petition in good faith. The district court found Hirsch's petition contained claims which were not warranted by existing law or by a reasonable argument for a change in existing law or a change in the interpretation of existing law. In addition, the district court found Hirsch's petition was "frivolous and wholly without merit" and referred him to the Director of the Department of Corrections for the forfeiture of statutory credits.

While recognizing that there may be circumstances where it would be inappropriate to refer a prison inmate for the forfeiture of credits, we conclude the district court did not clearly abuse its discretion in this instance. *See* NRS 209.451(1)(d)(2); *see also Hosier v. State*, 121 Nev. 409, 412, 117 P.3d 212, 214 (2005) (discussing similar circumstances in which

²The record reveals Hirsch also has a consecutive sentence for his May 25, 2018, conviction of driving under the influence, third offense, but he has not started serving that sentence.

the Nevada Supreme Court might refer an inmate under NRS 209.451(1)(d) when he or she files a frivolous original writ petition). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. James Todd Russell, District Judge
Jeffery W. Hirsch
Attorney General/Carson City
Carson City Clerk